

FLORENCIA A. DE MONDIA, CONSOLACION DECIMO, PANTALEON QUISON, SIMPLICIO VARGAS, CHIA AYHING, AND JOSE SORIANO, PETITIONERS, VS. THE PUBLIC SERVICE COMMISSION AND NEGROS TRAVELWA...*G.R. No. 45727-45729. June 22, 1938*

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45727-45729/>**IMPERIAL, J.:**

In these three proceedings the petitioners pray (1) that the Public Service Commission hear and give course to the complaint filed against the operator Rustico M. Matus in record No.33371 of said commission; (2) that the decisions rendered by the Public Service Commission on December 2, 1936 and January 27, 1937, the first in record No. 47687 thereof and the second in records Nos. 47687 and 47727, be set aside; and (3) that the the commission abstain from taking any action in record No. 49804 thereof, in relation to the application filed by Negros Travelways Corporation for the extension of its service lines to other territories wherein the petitioners operate.

The petition filed in each of these three cases is of one tenor, and as a matter of fact those attached to the last two cases are carbon copies of the original appearing in the initial pages of the first. This is the reason for consolidating the three cases and for now rendering only one decision therein.

- As a preliminary question the respondent Negros Travelways Corporation seeks the dismissal of these three proceedings on the ground that the petitioners did not move for a new trial or for the reconsideration of the assailed decisions before coming to this court and filing the petitions for certiorari. In their petitions the petitioners allege that, as soon as they were informed of said decisions, they filed motions for intervention and reconsideration and, in support of said allegation, they have attached to the petitions as appendices E, F, G, H, and I copies of the pleadings filed. As these copies are not duly certified, we are not in a position to determine the truth. Supposing, however, that motions for reconsideration or new trial were in fact not filed, we hold that lack thereof is not an obstacle to the institution of these proceedings.

In the cases of *Mirasol Transportation Co. vs. Negros Travelways Corporation and Matus* (G. R. Nos. 45447 and 45448, 36 Off. Gaz., 2616), we hold that one appealing from an order, resolution or decision of the Public Service Commission by means of a petition for review, does not have to file a motion for reconsideration or new trial before being able to so appeal. We then said:

"The doctrine laid down by this court in the cases of the *Philippine Shipowners' Association vs. Public Utility Commission* (47 Phil., 489), and *Philippine Long Distance Telephone Company vs. Provincial Government of Pampanga* (G. R. No. 35105, December 10, 1931), to the effect that the filing of an application for a rehearing is a condition precedent indispensable to the taking of an appeal from any order, ruling, or decision of the commission, is inapplicable to the case at bar on the ground that it was based upon section 28 of the old Act No. 3108 requiring the taking of such step before filing a petition for review or certiorari, for which reason in the former case it was stated: 'Sections 28 and 35 of the Public Utility Law, Act No. 3108, are applicable. The

first cited section provides in part: "Once a case has been decided after the rehearing, any interested party may, if he so desires, take an appeal to the Supreme Court by following the procedure prescribed in section thirty-five of this Act." The last cited section then provides in part: 'Any order made by the commission may be reviewed on the application of any person or public utility affected thereby, by certiorari in appropriate cases, or by petition, to the Supreme Court, within thirty days from the date upon which such order becomes effective, as herein provided; * * * These two sections must be construed together. They imply that an application for a rehearing is a condition precedent for the perfection of the appeal. That is the practice followed in the Courts of First Instance. That is the practice which should be followed, in public utility cases.'

"In view of the innovation introduced by Act No. 146, this court holds that in appeals from any order, ruling, or decision of the Public Service Commission, by means of a petition for review, it is not necessary, for the perfection thereof, to file a petition for reconsideration or rehearing of the order, ruling, or decision in question. This court refrains from deciding for the present the question whether or not the same rule governs in appeals by certiorari because this point is neither involved nor submitted for determination."

We see no valid reason for not applying the rule to appeals by certiorari. As already seen, the basis of the rule previously laid down in the cases of Philippine Shipowners' Association and Philippine Long Distance Telephone Company was that the phrase "after the rehearing" had been used in section 28 of Act No. 3108 and was construed to mean that the motion for reconsideration or new trial was necessary as a preliminary step to the appeal. Inasmuch as this phrase has been deliberately suppressed from Common wealth Act No. 146, we conclude and So hold that the filing of a motion for reconsideration or new trial is no longer a necessary formality in or a condition precedent to an appeal from an order, resolution or decision of the Public Service Commission by means of a petition for certiorari.

- During the pendency of these cases Florencia A. de Mondia, represented by Attorney Felix P. Amante, filed a motion praying for the dismissal of said cases in so far as concern her, for the reason that the appeal taken in her name by the other attorneys was without her knowledge or consent and that she no longer has any interest therein in view of the sale of her certificates of public convenience which are affected in these cases. Counsel for the other petitioners object to the motion on the ground that they were authorized by Florencia A. de Mondia to take and prosecute the appeal and that, the transfer of her certificates of public convenience not having been as yet confirmed by the commission, she continues to have an interest in the case.

Consolacion Decimo, another petitioner, also filed a motion asking that the cases be dismissed as regards her, because her appeal was interposed without her knowledge and consent and she has no interest in these appeals. The attorneys for the other petitioners likewise oppose this motion, alleging that they were duly authorized by her to bring the appeal, that they have information to the effect that Negros Travelways Corporation has purchased her certificate of public convenience in order to defeat these proceedings, and that the sale not having been as yet confined by the Public Service Commission, said Consolacion Decimo continues to be interested in these cases.

We hold that the attorneys for the other petitioners cannot justifiably object to the dismissal of the cases at the instance of the movants and in so far as concern the latter. The right to ask for the dismissal of an action or appeal is exclusive to the moving party and while the dismissal in some cases depends upon the sound discretion of the courts, it is generally granted (section 127, Code of Civil Procedure). The attorneys for the other petitioners cannot pretend to continue representing the movants since the latter are entitled to dispense with their services at any time (section 32, Code of Civil Procedure). Without determining whether they have duly represented the movants and were authorized by the latter to take the appeals, it becomes obvious that they cannot prevent said movants, as co-petitioners, from withdrawing from the cases at any time, specially now when they allege that they no longer have any interest therein.

These three proceedings are dismissed as regards the petitioners Florencia A. de Mondia and Consolacion

Decimo, without costs.

- On December 18, 1935, the commission issued an order in record No. 33371 requiring the irregular operator Rustico M. Matus to appear on January 15, 1936 and show cause, if any, why his certificate of public convenience to operate a truck should not be cancelled as a result of his act in substituting its cylinder set with another and in erasing its number and substituting therefor the number of the cylinder set of his old truck bearing plate number TPU-4497. Pending determination of the complaint which gave rise to said order, Rustico M. Matus and Negros Travelways Corporation filed an application in record No. 47687 praying for the approval of the transfer made by the first to the second of his certificate of public convenience issued in record No. 33371. The commission set the application for hearing and directed that the order setting said hearing be published in a newspaper and that the operators affected be notified by registered mail, which publication and notice were effected, and on December 2, 1936 the commission rendered a decision approving the sale. Mirasol Transportation Co. moved for the reconsideration of this decision which was denied by the commission in its decision of January 27, 1937. In denying the motion for reconsideration, the commission advanced the ground that there was no irregularity in the sale, because the price of P2,500 was justified in view of the fact that it was then difficult to acquire a certificate of public convenience and prices had risen high; and with reference to the pending complaint against Rustico M. Matus the commission stated that it was unfounded because it was checked that the change of the cylinder set had been made in a Chevrolet truck different from a Ford which was the equipment of said operator in accordance with his certificate. The petitioners now contend that the commission abused its discretion in approving the transfer of the certificate of Rustico M. Matus in favor of Negros Travelways Corporation pending resolution of the complaint against him.

We hold that petitioners' pretension on this point is unfounded. The commission did not misuse its discretion in approving the sale of Matus' certificate not only because it was justified but because the complaint against him was without merit. As stated in its decision, it results that the change of the cylinder set, which is the irregularity, was effected in a truck different from the equipment granted in the certificate. Said decision, in respect of the complaint, had the effect of dismissing the same and exonerating the operator, and the circumstance that it was rendered after the approval of the sale does not make the decision approving the sale irregular or illegal.

- The petitioners assail the decision rendered by the commission on December 2, 1936 in record No. 47637 and that rendered on January 27, 1937 in said record and in No. 27727, by virtue of which the commission respectively, approved the sale of Matus' certificate in favor of Negros Travelways Corporation and converted the irregular service authorized in said certificate into a regular one. The petitioners allege that both decisions are illegal because they were promulgated pending the complaint against Matus and because the applications on which the decisions were founded were heard and granted without notifying them and without giving them opportunity to be heard. They allege that the commission acquired no jurisdiction to render said decision and that in so proceeding it gravely abused its discretion in case it had jurisdiction. The two decisions were appealed from by Mirasol Transportation Co., Inc., by means of petitions for review filed with this court and docketed as G. R. Nos. 45447 and 45448. These appeals, although submitted, are still pending decision.

The respondents argue that the petitions for certiorari, as regards said two decisions, are not proper because appeals were taken therefrom. There is no merit in the contention as Mirasol Transportation Co., Inc., a stranger in these cases, and not the herein petitioners, is the appellant.

With reference to the first phase of petitioners' contention, we already said that the decision of December 2, 1936 is not illegal by virtue of the mere fact that it was rendered during the pendency of the complaint against Matus. As to the second phase, we are of the opinion that the petitions cannot be sustained. It appears that upon receipt of the application for the approval of the sale of Matus' certificate, the commission issued an order

setting it for hearing and requiring the then applicants to publish said order in an English or Spanish newspaper and all interested parties to appear and oppose the application, if they had any ground therefor. The order was published in La Opinion, and an affidavit of the manager showing that the required publications were made, was presented in evidence by the applicants during the trial. Upon registering the application for the conversion of the irregular service into a regular one, the commission issued an order setting it for hearing and required the then applicant to publish the same in two newspapers edited in English and in Spanish, and in said order all interested parties were directed to appear on the day of the trial and oppose the application if they had any good ground therefor. At the trial the applicant introduced in evidence the affidavits of the managers of the newspapers The Commerce and La Opinion showing that the required publications were made.

Section 11 of Commonwealth Act No. 146 confers upon the Public Service Commission the power to promulgate rules regarding the procedure to be followed before it which are not inconsistent with the express provisions of the law. Section 16 (m) empowers the commission, among other things, to amend any certificate issued in accordance with law, upon notice and hearing in conformity with the rules and provisions of law. Section 23 (g) provides, among other things, that the sale of a certificate of public convenience, to be effective, must be approved by the commission after notice to the public and after hearing the persons interested at a public hearing. The law does not specify the form in which the required notices should be made, and to supply this deficiency the commission issued rules providing that in all cases the order setting the hearing must be published in one or more newspapers, at its discretion, and that copies of said order must be sent to the regular operators affected either by registered mail or personally. The petitioners, as irregular operators, had no right to notice either personal or by registered mail, notice by means of publication made in the newspapers being sufficient and valid. In the instant case the rules of the commission were strictly complied with, and we are unable to see how it can be successfully pretended that the assailed decisions were rendered irregularly, with abuse of discretion, or without jurisdiction having been acquired by the commission. We conclude, in view of the facts stated, that both decisions were promulgated conformably to law and after strict observance of the legal requirement as to notices and hearing.

- The petitioners also contend that the commission abused its discretion in converting the irregular service acquired from Matus by Negros Travelways Corporation into a regular one without previously requiring proof that the latter is a corporation sixty per centum of the stock or capital of which belongs to citizens of the Philippines or of the United States, as provided in section 8, Article XIII, of the Constitution and section 16 (a) of Commonwealth Act No. 146.

As far as we know, there is no law requiring that a partnership, corporation or association applying for a certificate of public convenience must allege in its petition that sixty per centum of its stock or capital is owned by citizens of the Philippines or of the United States. These facts are not jurisdictional and need not be alleged in the petition because if the contrary be proved, the commission would have jurisdiction not only to dismiss the application but to deny the granting of the certificate. Considering the purpose of the provisions, said facts rather constitute a ground of opposition and should be alleged in the pleading of such character that may be filed. Of course the commission, in the exercise of its general powers, should inquire into these facts during the trial, and the legal presumption, in the absence of proof to the contrary as in the present case, is that the applicant entity complies with such provisions. The very petitioners do not even insinuate that Negros Travelways Corporation is incapacitated for not meeting the aforesaid requirements. At any rate, if at any time it be discovered that the corporation does not satisfy the conditions prescribed, the commission, *motu proprio* or upon petition of a party and after notice and hearing, may revoke and cancel its certificate of public convenience.

- In record No. 49804 of the Public Service Commission Negros Travelways Corporation filed a petition praying that its lines be extended to some of the territories occupied and operated by the petitioners. The latter opposed the petition and the commission designated the justice of the peace of Bacolod, Province of Occidental Negros, to hold hearings and receive the evidence which the parties may desire to present. Petitioners allege that the

commission abused its discretion in issuing the order commissioning said justice of the peace and pray this court to suspend all proceedings of the commission in said case. We find no merit in the contention. The commission, in the exercise of its general powers (section 13, Commonwealth Act No. 146), may order the reference of the petition presented and it did not abuse its discretion in commissioning the justice of the peace and in ordering him to hold hearings for the purpose of receiving the evidence of the parties (section 32, Commonwealth Act No. 146). The pendency of the appeals to which we have referred at the outset is not a bar to the giving of due course to the petition because the questions involved in the appeals are different from the petition for the extension of the lines, and the decisions to be rendered by this court in said appeals will not affect the petition or the decision which may be rendered by the commission in relation thereto.

For the reasons stated, these three petitions for certiorari are denied, with the costs of each against the petitioners with the exception of Florencia A. de Mondia and Consolacion Decimo. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.